



2025:DHC:8031



\$~64

* **IN THE HIGH COURT OF DELHI AT NEW DELHI**

Date of decision: 12.09.2025

+ W.P.(CRL) 2913/2025

XX

.....Petitioner

Through: Mr. Anwesh Madhukar,
Advocate (through VC) with
Mr. Pranjal Shekhar, Mr. Ishat
Singh and Ms. Prachi Niwan,
Advocates

versus

STATE GOVT. OF NCT OF DELHI & ANRRespondents

Through: Mr. Amol Sinha, ASC
(Criminal) (through VC) with
SI Rupesh Raj, PS Subhash
Place

CORAM:

HON'BLE MR. JUSTICE ARUN MONGA

ARUN MONGA, J. (ORAL)

1. All of 15 years old, a minor girl is before this Court, through her mother seeking permission to terminate her pregnancy of 27 weeks.
2. It is not in dispute that the gestational age of the foetus has crossed the statutory limit of 24 weeks prescribed under the Medical Termination of Pregnancy Act, 1971 (for short, "the MTP Act").
3. The case set up by the petitioner is that the pregnancy is the result of a sexual assault upon her. Continuation of the pregnancy, it is urged, would cause grave mental injury to the minor, as also to the



unwanted child if born, who at present is in the foetal stage.

4. The petitioner, through her mother, seeks enforcement of her right to life under Article 21 of the Constitution of India, stating that same necessarily includes the right to live with physical as well as mental health. It is submitted that enforcement of this fundamental right justifies the issuance of an appropriate writ by this Court, notwithstanding the apparent statutory bar under the MTP Act.

5. In the aforesaid backdrop, I have heard the rival contentions of the learned counsel for the petitioner as well as the learned ASC for State.

6. Learned counsel for the petitioner would urge as under :-

6.1 The victim and her family had resided in a rented premises in 2016 where they came into contact with the accused, Bharat, the landlord's son. Even after shifting to another residence, the families maintained cordial relations for nearly a decade, during which the accused and the victim developed friendship that later turned into a relationship.

6.2 In December 2024, the accused lured the victim to his residence under the promise of marriage and established physical relations with her for the first time on 14.12.2024. Thereafter, on multiple occasions, he continued to exploit the victim sexually under the false pretext of marriage, the last such incident occurring in April 2025.

6.3 Subsequently, when the victim missed her menstrual cycle for two to three months, she took a pregnancy test on 31.08.2025 which confirmed she was pregnant. On being informed, the accused flatly refused to marry her and pressured her to abort the child.



2025:DHC:8031



6.4 On 06.09.2025, the victim disclosed the facts to her parents. Her father immediately contacted the police, leading to registration of FIR No. 549/2025 under Section 69 of the Bharatiya Nyaya Sanhita, 2023 and Section 6 of the POCSO Act, 2012 at P.S. Subhash Place. The victim was medically examined at Bhagwan Mahavir Hospital, Pitampura, where MLC No. 31/2025 was prepared. An ultrasound conducted on 08.09.2025 revealed the foetus to be about 27 weeks old.

6.5 The victim was thereafter produced before the Child Welfare Committee on 08.09.2025 in CWC Case No. 2025-26/473, where directions from court were sought for medical termination of pregnancy.

6.6 In light of the facts of the present case, he relies on various judicial precedents and argues that the petition be allowed.

7. *Per Contra*, learned ASC for State would oppose the petition stating that the foetus is since already gone past the age of 24 weeks and concededly at 27, the foetus has a heartbeat and even as per the medical opinion the foetus may be born alive even if caesarian termination of pregnancy is carried out.

8. Having given my thought to the rival contentions, I shall render my opinion thereof in the succeeding part by recording reasons.

9. The petitioner is seeking enforcement of her 'Right to Life' as enshrined under Article 21 of the Constitution of India since dismissal of her request to conduct medical termination of her pregnancy shall cause grave mental injury upon the said petitioner as she is a rape victim, as espoused under Explanation 2 to the Section 3(2) of the



Medical Termination of Pregnancy Act, 1971.

10. Matter was earlier heard by me on 10.09.2025 when the following order was passed:

“1. Petition herein is, inter alia, to seek indulgence of this court for medical termination of the pregnancy of the 15 years old minor victim as per view of the Explanation No. 2, Section 3(2) of the Medical Termination of Pregnancy Act, 1971.

2. Notice. Learned ASC for State accepts notice.

3. Victim is stated to be in 27 weeks pregnant. Given the alacrity that is warranted in the situation in hand, as pleaded in the petition, learned ASC for State to take forthwith steps to file a medical report qua the stage of the pregnancy, as well as, the mental and physical fitness of the minor, who has approached this Court through her mother.

4. Currently, as the matter is being heard and the instant order is under dictation, on a query posed, it transpires that the minor is already in Baba Sahab Ambedkar Hospital, Sector 6, Rohini, New Delhi, along with her mother and the Investigating Officer.

5. In the premise, the Superintendent/ Management of the Baba Sahab Ambedkar Hospital is directed to get the minor examined by constituting a Medical Board of the experts and file a report, ibid. Needful be done forthwith but not later than 24 hours.

6. Learned ASC for State to immediately inform the instant order telephonically to the Superintendent/ Management of the Baba Sahab Ambedkar Hospital.

7. Let the report of the Medical Board be submitted before this Court on the next date of hearing.

8. List on 12.09.2025.

9. A copy of the order be also handed over to the learned counsel for the petitioner under signatures of the Court Master.”

11. In terms of the aforesaid order, the Superintendent, Dr. Baba



Saheb Ambedkar Hospital, Sector VI, Rohini, Delhi-85 has submitted a report of the Medical Board dated 11.09.2025 where it is opined as under:

- *Victim is a minor girl of 15 years only and pregnancy caused due to alleged sexual assault and continuation of pregnancy will constitute a grave injury to mental health of victim [Section 3(b), Explanation 2 of the MTP Act].*
- *As the pregnancy is already 27+ weeks baby may be born alive and may survive with complications of prematurity.*
- *If medical method of termination of pregnancy fails, surgical management may be required.*
- *With moderate Anemia. May need blood transfusion.*
- *Victim and her mother counseled about above points.*

12. In light of the medical report, I am of the considered opinion that, at this stage, the mental and physical well-being of the victim, who has already endured cruelty at the hands of the perpetrators, must outweigh the mere probability of the foetus being born alive, which the medical experts themselves have noted as uncertain. What is certain is the plight of the victim, a minor child who has conceived under the agony of fate. She requires greater protection at present than the uncertain possibility of preserving a foetus that may not even survive. It is also noted that medical terminations between 24 to 28 weeks of gestation ordinarily result in the foetus being stillborn, though exceptions may exist.

13. Considering the age of the petitioner and the mental and physical trauma inflicted upon her by the heinous act of sexual assault, this Court is of the opinion that continuation of the pregnancy would permanently scar her psyche and cause grave and irreparable harm to



her physical and mental health.

14. While it is true that the Medical Termination of Pregnancy Act, 1971, prescribes 24 weeks as the statutory limit for termination, it is equally well established that constitutional courts, in exercise of their extraordinary jurisdiction under Article 226 of the Constitution of India, may in exceptional circumstances permit termination beyond the statutory limit. The present case, in the opinion of this Court, clearly falls within such category.

15. In view of the above, the writ petition is allowed. Dr. Baba Saheb Ambedkar Hospital, Sector VI, Rohini, Delhi-85 is directed to carry out the procedure for termination of the petitioner's pregnancy at the earliest.

16. The petitioner is permitted to get herself admitted to Dr. Baba Saheb Ambedkar Hospital today itself on the strength of this order.

17. The said hospital shall act upon a copy of this order duly signed by the Court Master without awaiting a certified copy.

18. It is clarified that, during the procedure, if the attending doctors form the opinion that there is a serious risk to the life of the petitioner, they shall have full discretion to withhold or cancel the termination procedure.

19. The hospital is directed to preserve the foetus for the purposes of DNA testing, as it may be required in connection with the pending criminal proceedings.

20. The doctors concerned shall also preserve relevant foetal tissue samples for DNA identification and any other purpose necessary in relation to the criminal case registered against the accused.



21. In the event the child is born alive, the Superintendent, Dr. Baba Saheb Ambedkar Hospital, shall ensure that all possible and feasible medical assistance is extended to such child, and the Child Welfare Committee concerned shall take necessary steps in accordance with law. The cost of the procedure, if any, is directed to be borne by the State.

22. The petition is allowed and disposed of in the aforesaid terms.

23. Having disposed of the petition on the merits, as above, I consider it necessary, before parting, to advert to a collateral yet recurring issue i.e. What are the rights of the foetus once it attains viability ? Medical Termination of Pregnancy Act is silent on it. It is observed that with the increasing number of cases seeking termination of pregnancy beyond the statutory limit, the question of foetal viability has assumed considerable importance in abortion jurisprudence.

24. Medical science generally recognises viability at around twenty-four weeks of gestation, particularly with access to neonatal care. The legislature, through the 2021 amendment to the Medical Termination of Pregnancy Act, has also adopted this benchmark by prescribing twenty-four weeks as the outer limit for termination under most circumstances. Needless to add, this cut-off cannot be regarded as inflexible. Constitutional courts, in exercise of their jurisdiction, have, in compelling circumstances, permitted termination even beyond the said period, particularly where continuation of pregnancy posed grave risk to the life, health, or dignity of the woman.

25. It stands settled that the rights of the woman, flowing from



Article 21 of the Constitution, comprising her life (which includes right to physical and mental well being), liberty, dignity, and decisional autonomy, must prevail over competing claims of foetal survival. The State cannot, consistent with constitutional guarantees, compel a woman to undergo physical or mental trauma solely for the preservation of unborn life. Any such compulsion would, in effect, render her fundamental rights nugatory and subordinate to rigid biological benchmarks.

26. In matters of such type, as the one in hand, this Court has consistently relied upon the recommendations of duly constituted Medical Boards in such matters, more so when the pregnancy has crossed the twenty-four-week mark. The role of these expert bodies in assessing the risks to the woman's life and health, and in determining the severity of foetal abnormalities, whether fatal or otherwise, cannot be overstated. Their opinions have provided the necessary medical foundation for judicial discretion, ensuring that the decision-making process is informed by expertise rather than constrained by statutory silence.

27. From the judicial precedents, it is discernible that where the life or health of the woman is endangered, her rights are paramount. Where the foetus suffers from grave or life-incompatible abnormalities, courts have permitted termination even up to twenty-eight or thirty-two weeks. Conversely, where the foetus is viable and healthy, and termination is sought on non-medical grounds, courts have declined relief, being mindful of the rights of a foetus capable of independent survival.



2025:DHC:8031



28. It is, however, at this juncture that a larger question arises viz. What is the position in law as regards the rights of a viable foetus which, if delivered, may be born alive? This issue warrants attention. While constitutional courts have, in the absence of legislative clarity, sought to balance competing interests through case-specific adjudication. However, the absence of a clear statutory framework leaves the matter unsettled.

29. Judicial discretion, however sensitively exercised, cannot be a substitute for legislative determination. The law must clearly delineate the balance between maternal autonomy and foetal rights at the stage of viability. No doubt, until such clarity is provided, courts will continue to tread this delicate path; but the ultimate responsibility to settle the matter rests with the law-making authority. It is time that the lawmakers of the country address this question in no uncertain terms.

30. *Dasti* under signatures of the Court Master.

ARUN MONGA, J

SEPTEMBER 12, 2025/SV